

OFFICE OF GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Broadband Communications Corporation v. FCC & USA, No. 94-1292, PCN America, Inc. v. FCC & USA, No. 92-1294 and Time Warner Telecommunications, Inc. v. FCC & USA, No. 94-1299. Filing of three new Petitions for Review in the United States Court of Appeals for the D.C. Circuit.

DATE: April 8, 1994

Docket No(s). GEN 90-314

File No(s). RM-7140, RM-7175, RM-7618,
PP-6 through PP-10, PP-12, PP-13,
PP-15 through PP-20, PP-26, PP-27,
PP-41 through PP-52, PP-54 through
PP-68, PP-70, PP-72 through PP-78

This is to advise you that on April 1, 1994, Broadband Communications Corporation and PCN America, Inc., and on April 4, 1994, Time Warner Telecommunications, Inc., filed Section 402(a) Petitions for Review of the FCC decision: In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 93-550, released February 3, 1994, in the U.S. of Appeals for the District of Columbia Circuit.

In the order under review, the Commission granted pioneer's preferences to three applicants for personal communications services (PCS) licenses while denying the pioneer's preference requests for 47 other applicants. The petitioners, whose pioneer's preference requests were denied, claim that the FCC arbitrarily misapplied its pioneer's preference criteria in this proceeding.

Due to a change in the Communication~~s~~ Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 94-1292, 94-1294 and 93-1299 and the attorney assigned to handle the litigation of this case is James Carr.

Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

In the Third Report and Order, the Commission granted pioneer's preferences for licenses of personal communications services to three applicants for such preferences, and denied the requests of 47 other applicants, including the request of Broadband. See Third Report and Order, at ¶¶ 182-183. Relief is

sought on the grounds that the Third Report and Order is arbitrary, capricious and otherwise contrary to law. Venue is proper under 28 U.S.C. § 2343.

Broadband requests that this Court hold unlawful, vacate, enjoin, and set aside the Third Report and Order, and that the Court grant such other and further relief as may be proper and just under the circumstances.

Respectfully submitted,

By: 
Albert H. Kramer
David B. Jeppsen

KECK, MAHIN & CATE
1201 New York Avenue
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for Petitioner
Broadband Communications Corporation

April 1, 1994

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

BROADBAND COMMUNICATIONS CORPORATION

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA

Respondents.

)
)
)
)
)
)
)
)
)
)

Case No.: _____

CERTIFICATE OF SERVICE

I, David B. Jeppsen, hereby certify that on this 1st day of April, 1994, true and correct copies of the foregoing Petition for Review and Corporate Disclosure Statement were mailed, along with the first page of the Third Report and Order, by first class mail, postage prepaid, to all of the parties on record in the Federal Communication Commission's Gen. Docket No. 90-314.


David B. Jeppsen

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 93-550
 Washington, D.C. 20554

| | | |
|---------------------------------|---|-----------------------------|
| In the Matter of |) | GEN Docket No. 90-314 |
| |) | RM-7140, RM-7175, RM-7618 |
| Amendment of the Commission's |) | PP-6 through PP-10, PP-12, |
| Rules to Establish New Personal |) | PP-13, PP-15 through PP-20, |
| Communications Services |) | PP-26, PP-27, PP-41 through |
| |) | PP-52, PP-54 through PP-68, |
| |) | PP-70, PP-72 through PP-78 |

THIRD REPORT AND ORDER

Adopted: December 23, 1993; Released: February 3, 1994

By the Commission: Chairman Hundt not participating;
 Commissioners Quello, Barrett, and Duggan issuing separate
 statements.

TABLE OF CONTENTS

| | <u>Paragraph</u> |
|--|------------------|
| I. INTRODUCTION | 1 - 2 |
| II. BACKGROUND | 3 - 6 |
| III. DISCUSSION | 7 - 301 |
| A. Pioneer's Preferences Granted. | 7 - 80 |
| 1. American Personal Communications. | 10 - 36 |
| 2. Cox Enterprises, Inc. | 37 - 50 |
| 3. Omnipoint Communications, Inc.. | 51 - 74 |
| 4. License Block | 75 - 80 |
| B. Pioneer's Preferences Denied | 81 - 301 |
| 1. American Portable Telecommunications, Inc. | 81 - 88 |
| 2. Associated PCN Corporation | 89 - 96 |
| 3. Atlantic Cellular Company, L.P. | 97 - 99 |
| 4. Cablevision Systems Corporation | 100 - 104 |
| 5. Linkatel Communications, Inc. | 105 - 106 |
| 6. LiTel Telecommunications Corporation | 107 - 113 |
| 7. PCN America, Inc. | 114 - 120 |
| 8. Personal Communications Network Services of New York, Inc. | 121 - 132 |
| 9. Southwestern Bell Personal Communications, Inc. | 133 - 138 |
| 10. Tel/Logic, Inc. | 139 - 143 |
| 11. US West NewVector Group, Inc. | 144 - 145 |
| 12. Vanguard Cellular Systems, Inc. | 146 - 147 |
| 13. Sharecom-Austin, L.P. | 148 - 149 |
| 14. Time Warner Telecommunications, Inc. | 150 - 156 |
| 15. Adelphia Communications Corp. | 157 - 158 |
| 16. Advanced MobileComm Technologies, Inc. and | |

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

BROADBAND COMMUNICATIONS CORPORATION)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS COMMISSION)
and UNITED STATES OF AMERICA)

Respondents.)

RECEIVED

APR 4 1994

MAIL BRANCH

Case No.: _____

CORPORATE DISCLOSURE STATEMENT

Broadband Communications Corporation ("Broadband"), pursuant to Rule 26.1 of the Federal Rules of Civil Procedure and Circuit Rule 6A, hereby submits this Corporate Disclosure Statement.

Broadband is a corporation under the laws of the District of Columbia. Broadband has not issued any shares to the public.

Broadband provides telecommunications services subject to the general jurisdiction of the Federal Communications Commission.

Respectfully submitted,

By:



Albert H. Kramer
David B. Jeppsen

KECK, MAHIN & CATE
1201 New York Avenue
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for Petitioner
Broadband Communications Corporation

April 1, 1994

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

PCN AMERICA, INC.

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA

Respondents.

Case No.:

94-1294
Filed: 4/1/94

PETITION FOR REVIEW

PCN America, Inc. ("PCNA"), pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, petitions this Court for review of the Federal Communications Commission's Third Report and Order in the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC No. 93-550, RM-7140, RM-7175, RM-7618, pp-6 through pp-10, pp-12, pp-13, pp-15 through pp-20, pp-26, pp-27, pp-41 through pp-52, pp-54 through pp-68, pp-70, pp-72 through 78 (released February 3, 1994) (the "Third Report and Order"). A summary of this order was published in the Federal Register on February 28, 1994. See 59 Fed. Reg. 9419 (Feb. 28, 1994). A copy of this order is attached hereto.

In the Third Report and Order, the Commission granted pioneer's preferences for licenses of personal communications services to three applicants for such preferences, and denied the requests of 47 other applicants, including the request of PCNA. See Third Report and Order, at ¶¶ 114-120. Relief is sought on the grounds that the Third Report and Order is arbitrary, capricious

and otherwise contrary to law. Venue is proper under 28 U.S.C. § 2343.

PCNA requests that this Court hold unlawful, vacate, enjoin, and set aside the Third Report and Order, and that the Court grant such other and further relief as may be proper and just under the circumstances.

Respectfully submitted,

By:



Albert H. Kramer
David B. Jepps

KECK, MAHIN & CATE
1201 New York Avenue
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for Petitioner
PCN America, Inc.

April 1, 1994

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

PCN AMERICA, INC.

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA

Respondents.

)
)
)
)
)
)
)
)
)
)

Case No.: _____

CERTIFICATE OF SERVICE

I, David B. Jeppsen, hereby certify that on this 1st day of April, 1994, true and correct copies of the foregoing Petition for Review and Corporate Disclosure Statement were mailed, along with the first page of the Third Report and Order, by first class mail, postage prepaid, to all of the parties on record in the Federal Communication Commission's Gen. Docket No. 90-314.


David B. Jeppsen

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FCC 93-550

| | | |
|---------------------------------|---|-----------------------------|
| In the Matter of |) | GEN Docket No. 90-314 |
| |) | RM-7140, RM-7175, RM-7618 |
| Amendment of the Commission's |) | PP-6 through PP-10, PP-12, |
| Rules to Establish New Personal |) | PP-13, PP-15 through PP-20, |
| Communications Services |) | PP-26, PP-27, PP-41 through |
| |) | PP-52, PP-54 through PP-68, |
| |) | PP-70, PP-72 through PP-78 |

THIRD REPORT AND ORDER

Adopted: December 23, 1993; Released: February 3, 1994

By the Commission: Chairman Hundt not participating;
 Commissioners Quello, Barrett, and Duggan issuing separate
 statements.

TABLE OF CONTENTS

| | <u>Paragraph</u> |
|--|------------------|
| I. INTRODUCTION | 1 - 2 |
| II. BACKGROUND | 3 - 6 |
| III. DISCUSSION | 7 - 301 |
| A. Pioneer's Preferences Granted. | 7 - 80 |
| 1. American Personal Communications. | 10 - 36 |
| 2. Cox Enterprises, Inc. | 37 - 50 |
| 3. Omnipoint Communications, Inc. | 51 - 74 |
| 4. License Block | 75 - 80 |
| B. Pioneer's Preferences Denied | 81 - 301 |
| 1. American Portable Telecommunications, Inc. | 81 - 88 |
| 2. Associated PCN Corporation | 89 - 96 |
| 3. Atlantic Cellular Company, L.P. | 97 - 99 |
| 4. Cablevision Systems Corporation | 100 - 104 |
| 5. Linkatel Communications, Inc. | 105 - 106 |
| 6. LiTel Telecommunications Corporation | 107 - 113 |
| 7. PCN America, Inc. | 114 - 120 |
| 8. Personal Communications Network Services of New York, Inc. | 121 - 132 |
| 9. Southwestern Bell Personal Communications, Inc. | 133 - 138 |
| 10. Tel/Logic, Inc. | 139 - 143 |
| 11. US West NewVector Group, Inc. | 144 - 145 |
| 12. Vanguard Cellular Systems, Inc. | 146 - 147 |
| 13. Sharecom-Austin, L.P. | 148 - 149 |
| 14. Time Warner Telecommunications, Inc. | 150 - 156 |
| 15. Adelphia Communications Corp. | 157 - 158 |
| 16. Advanced MobileComm Technologies, Inc. and | |

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

RECEIVED

APR 4 1994

MAIL BRANCH

PCN AMERICA, INC.

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA

Respondents.

Case No.: _____

CORPORATE DISCLOSURE STATEMENT

PCN America, Inc. ("PCNA"), pursuant to Rule 26.1 of the Federal Rules of Civil Procedure and Circuit Rule 6A, hereby submits this Corporate Disclosure Statement.

PCNA is a wholly-owned subsidiary of Millicom International Cellular, U.S.A. ("MIC-USA"). MIC-USA is owned by Millicom International Cellular, which has issued shares to the public.

PCNA and Millicom provide telecommunications services subject to the general jurisdiction of the Federal Communications Commission.

Respectfully submitted,

By:

Albert Kramer

Albert H. Kramer
David B. Jeppsen

KECK, MAHIN & CATE
1201 New York Avenue
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for Petitioner
PCN America, Inc.

April 1, 1994

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED
APR - 4 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Time Warner Telecommunications,
Inc.,

Petitioner,

v.

Federal Communications Commission
and the United States of America,

Respondents.

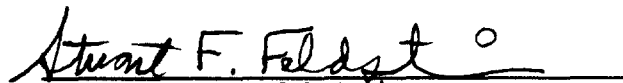
Case No. 94-1299
Filed: 4/4/94

PETITION FOR REVIEW

Time Warner Telecommunications, Inc. ("Time Warner") hereby petitions this Court for review of the Federal Communications Commission's ("Commission") Third Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services in Gen. Docket 90-314, FCC 93-350, RM-7140, RM-7175, RM-7618, PP-6 through PP-10, PP-12, PP-13, PP-15 through PP-20, PP-26, PP-27, PP-41 through PP-52, PP-54 through PP-68, PP-70, PP-72 through PP-78 (rel. February 3, 1994), 58 Fed. Reg. 9419 (February 28, 1994) ("Third Report and Order"). A copy of the Third Report and Order is attached hereto. This Petition is filed pursuant to provisions of 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1), 2344, Rule 15 of the Federal Rules of Appellate Procedure and Rule 15(a) of the Rules of this Court. Venue is proper in this Circuit under provisions of 28 U.S.C. § 2343.

In the Third Report and Order, the Commission granted three requests for pioneer's preferences for the provision of broadband Personal Communications Services, and denied 47 other such requests, including Time Warner's. Time Warner does not object to the Commission's decision to grant three pioneer's preferences. Time Warner is, however, aggrieved by the Commission's decision to deny its request for a pioneer's preference. Time Warner now asks this Court to vacate, enjoin and set aside the portion of the Third Report and Order wherein its request for a pioneer's preference is denied, and to direct the Commission to grant such other and further relief as may be proper and just under the circumstances. Time Warner seeks such relief on the grounds that the portion of the Commission's Third Report and Order denying Time Warner's request for a pioneer's preference is arbitrary, capricious and contrary to law.

Respectfully submitted,



Stuart F. Feldstein
Richard Rubin
Jill Kleppe McClelland

FLEISCHMAN AND WALSH
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 939-7900

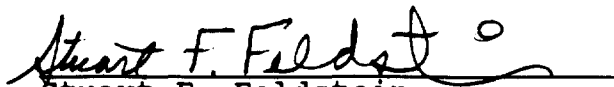
Attorneys for Petitioner
Time Warner
Telecommunications, Inc.

Dated: April 4, 1994

\14051

Toshiba Corporation and ITOCHU Corporation. TWT has no subsidiaries or affiliates with publicly issued stock.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stuart F. Feldstein", is written over a horizontal line.

Stuart F. Feldstein
Richard Rubin
Jill Kleppe McClelland

FLEISCHMAN AND WALSH
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 939-7900

Attorneys for Petitioner
Time Warner
Telecommunications, Inc.

Dated: April 4, 1994

VI4116

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED

APR - 4 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Time Warner Telecommunications,)
Inc.,)
)
Petitioner,)
)
v.)
)
Federal Communications Commission)
and the United States of America,)
)
Respondents.)
)

Case No. _____

DISCLOSURE OF INTERESTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Rules of this Court, Petitioner Time Warner Telecommunications, Inc. ("TWT") hereby submits this disclosure of interests.

TWT is a division of Time Warner Entertainment Company, L.P. ("TWE"). Neither TWT nor TWE have publicly issued shares of stock. TWE's majority owner and sole general partner is Time Warner Inc., a publicly traded company. TWE is minority owned by US WEST Cable Corporation, a subsidiary of US WEST Communications, Inc., which in turn is a subsidiary of US WEST, Inc., a publicly traded company, and by two Japanese companies,

CERTIFICATE OF SERVICE

I, Jill Kleppe McClelland, hereby certify that the foregoing Petition for Review and Disclosure of Interests were served this 4th day of April, 1994, by depositing true and correct copies thereof by United States first class mail, postage prepaid, on the following:

- * Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

- Janet Reno
Attorney General of the United States
Department of Justice
10th Street & Constitution Avenue, NW
Room 5111
Washington, DC 20530


Jill Kleppe McClelland

* By Hand Delivery